

**Introduced by Senator Battin**  
(Principal coauthor: Assembly Member Cook)

February 20, 2008

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An act to amend Section 868.5 of the Penal Code, relating to witness testimony.

LEGISLATIVE COUNSEL'S DIGEST

SB 1343, as introduced, Battin. Witness testimony: support persons: elder abuse.

Existing law authorizes a prosecuting witness in specified cases to have up to 2 persons of his or her own choosing for support at the preliminary hearing and at trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness, as specified.

This bill would add specified crimes against elder or dependent adults to the offenses for which a prosecuting witness may have up to 2 support persons while testifying.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 868.5 of the Penal Code is amended to  
2     read:  
3     868.5. (a) Notwithstanding any other law, a prosecuting  
4     witness in a case involving a violation of Section 187, 203, 205,  
5     207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d,  
6     273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, or 647.6,  
7     or former Section 277 or 647a, ~~or a violation of subdivision (1) of~~  
8     Section 314, *or subdivision (b), (d), or (e) of Section 368*, shall be

1 entitled, for support, to the attendance of up to two persons of his  
2 or her own choosing, one of whom may be a witness, at the  
3 preliminary hearing and at the trial, or at a juvenile court  
4 proceeding, during the testimony of the prosecuting witness. Only  
5 one of those support persons may accompany the witness to the  
6 witness stand, although the other may remain in the courtroom  
7 during the witness' testimony. The person or persons so chosen  
8 shall not be a person described in Section 1070 of the Evidence  
9 Code unless the person or persons are related to the prosecuting  
10 witness as a parent, guardian, or sibling and do not make notes  
11 during the hearing or proceeding.

12 (b) If the person or persons so chosen are also prosecuting  
13 witnesses, the prosecution shall present evidence that the person's  
14 attendance is both desired by the prosecuting witness for support  
15 and will be helpful to the prosecuting witness. Upon that showing,  
16 the court shall grant the request unless information presented by  
17 the defendant or noticed by the court establishes that the support  
18 person's attendance during the testimony of the prosecuting witness  
19 would pose a substantial risk of influencing or affecting the content  
20 of that testimony. In the case of a juvenile court proceeding, the  
21 judge shall inform the support person or persons that juvenile court  
22 proceedings are confidential and may not be discussed with anyone  
23 not in attendance at the proceedings. In all cases, the judge shall  
24 admonish the support person or persons to not prompt, sway, or  
25 influence the witness in any way. Nothing in this section shall  
26 preclude a court from exercising its discretion to remove a person  
27 from the courtroom whom it believes is prompting, swaying, or  
28 influencing the witness.

29 (c) The testimony of the person or persons so chosen who are  
30 also prosecuting witnesses shall be presented before the testimony  
31 of the prosecuting witness. The prosecuting witness shall be  
32 excluded from the courtroom during that testimony. Whenever the  
33 evidence given by that person or those persons would be subject  
34 to exclusion because it has been given before the corpus delicti  
35 has been established, the evidence shall be admitted subject to the  
36 court's or the defendant's motion to strike that evidence from the  
37 record if the corpus delicti is not later established by the testimony  
38 of the prosecuting witness.

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